

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELODY ANN BURTCH and
MICHAEL TODD BURTCH, JR., Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
April 4, 2006

Petitioner-Appellee,

v

MICHAEL BURTCH, SR.,

Respondent-Appellant.

No. 266000
Saginaw Circuit Court
Family Division
LC No. 01-027076-NA

Before: Smolenski, PJ, and Owens and Donofrio, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

Respondent argues that res judicata barred the trial court from assuming jurisdiction under the final termination petition. Respondent failed to preserve this claim by raising it below. *In re Hatcher*, 443 Mich 426, 434; 505 NW2d 834 (1993). The argument also clearly lacks merit. As in *In re Pardee*, 190 Mich App 243, 249; 475 NW2d 870 (1991), new evidence and changed circumstances justified the filing of the most recent petitions. The first two petitions were filed in 2001 and 2002. A third petition, filed in October 2004 and seeking temporary custody, was replaced in December 2004 by a permanent custody petition. The latest petitions contained many new allegations from 2003 and 2004, including (1) physical abuse of the minor children and their stepsister Amanda, (2) new instances of sexual abuse of Amanda, (3) violation (by the mother) of an order prohibiting contact between respondent and Amanda, (4) allowing the children to watch pornographic movies, masturbating in the children's presence, and encouraging them to masturbate while watching the movies, and (5) giving alcohol to the children. These and other very serious allegations of abuse and neglect were new and not based on the same evidence as the claims in the 2001 and 2002 petitions.

Further, there was no error in admitting evidence of the earlier sexual abuse of Amanda. We find that "the second termination proceeding was not based on 'essentially' the same

evidence, but was properly based on facts existing before the first proceeding and facts arising subsequent thereto." *Pardee, supra* at 250.

Finally, we have examined the record and find clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i), (g), and (j), and that termination was not clearly contrary to the children's best interests. MCL 712A.19b(5); MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355-356, 364-365; 612 NW2d 407 (2000).

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio